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SUBJECT: Preval Ponders Continued Use of Emergency Power

¶1. (SBU) On January 16, four days after the earthquake, President Preval declared a state of national emergency and assumed the extraordinary powers granted to the Executive by the "Law on the State of Emergency." The powers allow the Executive to enter into contracts, exercise eminent domain and take other actions in response to a natural disaster without consulting Parliament. Preval's authority under this emergency law will expire on February 16 unless Parliament grants an extension. Prime Minister Bellerive told members of the donors' coordination mechanism on February 8 that relations between the Parliament, which is controlled by the opposition, and the Executive have turned confrontational since the earthquake and Preval cannot count on Parliament to extend the Executive's emergency powers. Bellerive said that after February 16 the GOH will have to choose between continuing to exercise emergency powers beyond the time established in the "Law on the State of Emergency," or face gridlock as it would have to negotiate all disaster response needs with a fractious and obstructionist legislature. The situation is further muddled by the fact that the constitutional mandate of the lower house of Parliament expired on December 31, 2009 and the sitting Parliament is operating solely on the basis of their own vote to extend their mandate through May, 2010, which violates the constitution. The terms of two-thirds of the members of the Senate have not expired. President Preval continues to enjoy support of a tenuous majority in the Senate, but the Senate cannot pass laws without the corresponding vote in the lower chamber.

¶2. (SBU) "The Law on the State of Emergency" provides that:

* During a period of emergency caused by a natural catastrophe (to include earthquakes), the President has the authority to declare a "State of Emergency" for a period of 15 days. The President may extend this 15-day period for another 15-day period. However, beyond the second extension, the state of emergency can be renewed only with agreement by Parliament, and only for periods of 30 days at a time.

* If Parliament is not in session, the President may call them into session to consider the agreement.

* During the state of emergency, the powers of the President are extremely broad and include the authority to:

a. Pay all necessary expenses without taking into account the budget or the procedures established by statutes for making such expenditures;

- b. Sign necessary contracts without the procedure requiring bidding for public contracts;
- c. Order the closing of businesses;
- d. Order the removal of persons to other areas;
- e. Control access to streets;
- f. Establish financial assistance programs for victims;
- g. Appropriate private property to supplement relief and housing efforts if the government does not have sufficient resources to provide them;
- h. Reinforce the means of providing security in the affected area;
- i. Take measures to shelter displaced persons, and to order the construction, destruction or removal of property from the affected area; and
- j. Take any measure allowing him to resolve the situation ("prendre toutes autres mesures permettant de faire face a la situation.").

13. (SBU) COMMENT: Faced with the choice of continuing to exercise emergency powers beyond the period stipulated by law or giving an unconstitutional Parliament veto power over important disaster response actions, Bellerive appears inclined to do the former and was putting the international community on notice that the GOH did not have any perfect choices in this situation. He appealed for international community comprehension and support, noting that governments in Haiti (including his two predecessors) have fallen as a result of lesser confrontations with Parliament.

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